

ESTATE OF ROBERT BRADFORD BICKERSTAFF

MARCH 20, 1956.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 5453]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5453) for the relief of the estate of Robert Bradford Bickerstaff, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

STATEMENT OF FACTS

Captain Robert Bradford Bickerstaff, a pilot in the United States Army Air Force, died on January 5, 1945, while on active duty. He was a resident and citizen of Columbus, Ga. He was a member of several business partnerships. The deceased and said partnerships reported their income on a calendar-year basis.

For the calendar year 1945 an income tax return was filed for the deceased by his brother, R. H. Bickerstaff, as administrator of the estate of the deceased. On the basis of this return, the estate paid an income tax of \$5,453.92 on behalf of the decedent, payment being made on March 15, 1946.

On October 16, 1947, the administrator filed a claim for refund of the entire amount paid, together with accrued interest from date of payment based on the forgiveness provisions of then section 421, Internal Revenue Code. This claim was allowed by the Commissioner of Internal Revenue and the entire amount of taxes paid, together with interest thereon, was refunded in May 1948.

After the refund, the Commissioner claimed that the previous refund was in error and assessed a deficiency against the estate of the deceased in the amount of \$5,453.92 (the amount of the tax originally paid), together with interest. This deficiency was paid by the ad-

ministrator on September 7, 1950, together with interest in the amount of \$1,442.22.

On October 5, 1950, the estate of the deceased filed a claim for refund of the taxes assessed against and collected from it. This claim for refund was denied and the administrator filed a suit against the collector in the Middle District of Georgia to collect these taxes. Judge T. Hoyt Davis heard this case and on February 7, 1952, entered judgment in favor of the administrator against the collector in the amount of \$6,896.14, together with interest at 6 percent thereon according to law.

The collector appealed to the United States Court of Appeals for the Fifth Circuit, which court on November 29, 1952, reversed the judgment of the trial court.

After the decision of Judge Davis, reported at 102 Fed. Sup. 840, the executors of Raymond P. Lupia, who was killed in action on January 7, 1945, and who was also a member of a partnership, filed a suit in the District Court of New York against the collector to recover the tax paid by the estate on partnership income from the date of death to end of the partnership's fiscal year. The district court granted a summary judgment in favor of the estate. The collector appealed and the United States Court of Appeals for the Second Circuit affirmed the lower court and the collector filed a petition for certiorari to the Supreme Court of the United States, which Court this month held, per curiam, "We reject the construction placed upon the statute by the Fifth Circuit and approve the construction placed thereon by the Second Circuit whose judgment is affirmed."

The decision of the district court in the Lupia case is reported at 107 Fed. Sup. 552, and the decision of the Court of Appeals in that case is reported at 214 F. 2d 942. The decision of the Court of Appeals for the Fifth Circuit in the Bickerstaff case is reported at 200 F. 2d 181.

We would like to point out that after the decision in the case of *Lloyd v. Delaney* (181 F. 2d 941), holding that the forgiveness provisions of section 421 of the Internal Revenue Code were inapplicable to undistributed trust income, the Congress, in section 345 of the Internal Revenue Act of 1951 (26 USCA 345), still further extended the scope of income tax relief accorded deceased servicemen so as to embrace, within certain limits, trusts for their benefit in respect to income accumulated at their death which was payable to their estates or lineal next of kin.

The Treasury Department has no objection to the enactment of this bill; however, the Department does state that the committee should not consider this as a precedent for other cases. Therefore, it is stated here that it has always been the policy of this committee to consider each claim on its merits. Therefore, your committee concurs in the recommendation of the Treasury Department and recommend favorable consideration of this bill.

TREASURY DEPARTMENT,
Washington, March 13, 1956.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D. C.*

MY DEAR MR. CHAIRMAN: On April 4, 1955, you requested the Secretary of the Army to forward to your committee a report on H. R. 5453 (84th Cong., 1st sess.), entitled "A bill for the relief of the estate of Robert Bradford Bickerstaff." This request was referred by the Secretary of the Army to the Treasury Department on May 5, 1955.

H. R. 5453 would authorize and direct the Secretary of the Treasury to pay the sum of \$6,896.14 plus interest to the estate of Robert Bradford Bickerstaff, a pilot in the United States Army Air Corps who died on January 5, 1945.

The records of the Internal Revenue Service show that a deficiency in income tax and interest was assessed against Captain Bickerstaff's estate, in the amount indicated in H. R. 5453, for the period from January 6, to December 31, 1945, on the basis that the forgiveness provision of section 421 of the Internal Revenue Code of 1939 did not apply to any income taxes with respect to partnership income of the decedent during the remainder of the calendar year following the date of his death. This interpretation of section 421 was sustained by the Court of Appeals for the Fifth Circuit in this case but later in another case, was rejected by the Supreme Court.

In view of the unusual circumstances of this case, involving income taxes with respect to the income of a member of the Armed Forces of the United States who died while on active military service during World War II, the Treasury Department would not object to favorable action on H. R. 5453. It is suggested, however, that your committee may find it appropriate to include in its report on this bill, if favorable action is decided upon, a statement to the effect that such favorable action is not to be considered as a precedent for other cases, but that in all respects each case should be considered on its merits.

A detailed memorandum concerning H. R. 5453 is attached.

The Director, Bureau of the Budget, has advised the Treasury Department that there is no objection to the presentation of this report.

Very truly yours,

DAN THROOP SMITH,
Special Assistant to the Secretary in Charge of Tax Policy.

MEMORANDUM ON H. R. 5453 (84TH CONG., 1ST SESS.), ENTITLED "A BILL FOR THE RELIEF OF THE ESTATE OF ROBERT BRADFORD BICKERSTAFF"

H. R. 5453 would authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to the estate of Robert Bradford Bickerstaff (a pilot in the United States Army Air Corps who died on January 5, 1945), the sum of \$6,896.14, plus interest on such sum computed at 6 percent per annum from September 7, 1950, to the date of payment of such sum.

The bill further provides that "the payment of such sum, plus interest, shall be in full settlement of all claims of such estate against

the United States for refund of amounts paid by such estate as income tax and interest under a construction by the Treasury Department of the Internal Revenue Code of 1939 which was rejected by the Supreme Court of the United States." It also provides that no part of the amount appropriated in excess of 10 percent thereof shall be paid to any agent or attorney on account of services rendered in connection with this claim.

This case involves an interpretation by the Treasury Department of section 421 of the Internal Revenue Code of 1939, which was upheld in the instant case by the United States Court of Appeals for the Fifth Circuit in 1952, but which was expressly rejected by the United States Supreme Court, in another case, in 1955. Section 421 provided in part (August 5, 1947, c. 496, § 1, 61 Stat. 778):

"In the case of any individual who dies on or after December 7, 1941, while in active service as a member of the military or naval forces of the United States or of any of the other United Nations and prior to January 1, 1948—

"(a) the tax imposed by this chapter shall not apply with respect to the taxable year in which falls the date of his death, or with respect to any prior taxable year (ending on or after December 7, 1941) during any part of which he was a member of such forces; * * *"

The records of the Internal Revenue Service indicate that Capt. Robert Bradford Bickerstaff died on January 5, 1945, while on active duty as a member of the Armed Forces of the United States. During his lifetime, the decedent filed his income-tax returns on a calendar year basis. He was a member of several partnerships, which also filed on the calendar year basis.

The decedent's administrator filed an income-tax return for 1945 on behalf of the decedent. The return showed income of \$16,270.73 from which was deducted 5/365 of such amount, or \$222.90, leaving a taxable balance of \$16,047.83. The deduction was explained by reference to his death on January 5, 1945.

On the basis of this return, the estate paid an income tax of \$5,453.92 on behalf of the decedent, the payment being made on March 15, 1946. A claim for refund of this amount was filed by the decedent's administrator in October 1947 and allowed by the Internal Revenue Service in May 1948. After the refund, however, the Commissioner assessed a deficiency in the amount of \$5,453.92 (the amount of the tax originally paid), together with interest. This deficiency assessment, together with interest of \$1,442.22, or a total amount of \$6,896.14 (the amount specified in H. R. 5453), was paid on September 7, 1950:

The basis for this deficiency assessment was the view of the Internal Revenue Service that the terms of section 421 of the Internal Revenue Code of 1939 (quoted above) did not apply to any income taxes with respect to income earned during the remainder of the calendar year following the date of Captain Bickerstaff's death.

A claim for refund of the \$6,896.14 deficiency in tax plus interest was filed in October 1950 and disallowed in January 1951. The administrator of the decedent's estate then sued for refund in the United States District Court for the Middle District of Georgia, and obtained a favorable decision (*Bickerstaff v. Allen*, 102 F. Supp. 840 (1952)). On appeal, this decision was reversed by the United States Court of Appeals for the Fifth Circuit (*Allen v. Bickerstaff*, 200 F.2d 181 (1952)).

The administrator did not seek review of the latter decision by the United States Supreme Court.

The opposite result was reached, in another case involving similar facts, by the Court of Appeals for the Second Circuit.

In *Lupia's Estate v. Marcelle* (214 F. 2d 942 (1954)), it was held that section 421 of the Internal Revenue Code of 1939 forgave the tax payable by the estate of a partner who was killed in action while in military service on January 7, 1945, on his share of partnership income for the period from the date of his death to the end of the partnership's fiscal year, which was June 30, 1945. Affirming this judgment in 1955, the Supreme Court rendered per curiam the following decision (*Marcelle v. Estate of Lupia* (348 U. S. 956)):

"We reject the construction placed upon the statute by the Fifth Circuit and approve the construction placed thereon by the Second Circuit, whose judgment is affirmed."

In view of the unusual circumstances of this case, involving income taxes with respect to the income of a member of the Armed Forces of the United States who died while on active military service during World War II, the Treasury Department would not object to favorable action on H. R. 5453. It is to be noted, however, that this position is not to be construed as a precedent with respect to other legislation involving the changing, by congressional action, of the results of cases which have been decided by the courts. In general, such legislation is objectionable because it is likely to constitute an unfair discrimination against other taxpayers similarly situated.

It is suggested, therefore, that if the committee should decide to take favorable action on H. R. 5453, consideration be given to including in the report on the bill a statement to the effect that favorable action in this case is not to be considered as a precedent for other cases, but that, in all respects, each case should be considered on its merits, without relying upon the action of the committee in this instance.

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